

86-1635

NO. _____

Supreme Court, U.S.

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CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

WILLIAM R. LYNE,

Petitioner,

-vs-

DAVID COXON, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW MEXICO

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Petitioner

42/102



QUESTIONS PRESENTED

1. Whether or not the district court's entry of judgment ordering the sale of Petitioner's property and contract interests without compensation, after the court had declared it as an *in praesenti* interest in a valid contract and after the Defendants had forfeited all their interests to Petitioner under the contract and under the law, was an impairment of Petitioner's contract in violation of U. S. Const. art. I, §10, and a deprivation of property without just compensation or due process of law, in violation of U. S. Const. amend. XIV, §1.

2. Whether or not the district court's actions, in striking and prohibiting, pursuant to a New Mexico statute prohibiting the unlicensed practice of law, the pro se Petitioner's standing to plead, and his claims for relief, notices and pleadings-- filed as his only means of protecting and

enforcing his contract and property interests and rights-- as a member of a "non-lawyer class" was a denial of equal protection of the laws in violation of U. S. Const. amend. XIV, §1.

3. Whether or not the New Mexico Supreme Court's denial of Petitioner's alternative writ, and its affirmation of the two district court decisions, was a denial of due process of law, by its refusal to reverse the decisions, which deprived Petitioner's inalienable liberty of contracts, protected by U. S. Const. art. I, §10, and of his inalienable rights to equal protection of the laws, in the exercise of his liberty of contracts, and the protection of his property rights and interests, as guaranteed by the U. S. Const. amend. XIV, §1.

STATEMENT AS TO PARTIES

1. The following were parties to the original partition action, No. SF-80-1887 (c), in the Santa Fe District Court:

UNIVERSAL LIFE CHURCH, Plaintiff, v. DAVID V. COXON, MARY E. COXON, MICHAEL S. LUBY, ESTHER LUBY, MR. and MRS. JOSEPH LACY, DIANA AND JERRY ISAACS, d.b.a. Golden Key Realty of Santa Fe, Defendants, v. WILLIAM R. LYNE, Third-Party Defendant.

2. The following were parties to the second action for foreclosure, No. SF 85-926(c), in the Santa Fe District Court:

WILLIAM R. LYNE, Plaintiff, v. DAVID V. COXON, MARY E. COXON, MICHAEL S. LUBY, ESTHER LUBY, MR. and MRS. JOSEPH LACY, Defendants.

3. The same parties were parties to the appeal in the New Mexico Supreme Court, No. 16,117 and 16,212 Consolidated, with the exception that William R. Lyne appealed the first action in the capacity of plaintiff-assignee as well as in his own behalf.

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JURISDICTIONAL STATEMENT

Grounds for jurisdiction in this Court, pursuant to Rule 21.1.(i), are in the following Santa Fe District Court orders, as dated:

1. The Decision of the Court in SF 80-1887 (c), Judge Art Encinias, presiding, of June 18, 1984; (APPENDIX, Exhibit "B".)

2. The Judgment (interlocutory decree) of Sept. 14, 1984; (APPENDIX, Exhibits "C" and "D".)

3. The Order (striking pleadings) of Nov. 14, 1984; (APPENDIX, Exhibit "E".)

4. The Order to Show Cause, of May 20, 1985, and Order Appointing a Special Master, of May 30, 1985; (APPENDIX, Exhibits "F" and "G".)

5. The Order to Strike Liens and Compel

Sale (final order of confirmation appealed from), of Sept. 11, 1985; (APPENDIX, Exhibit "H".)

6. The Decision of the Court in SF 85-926 (c), Judge Bruce Kaufman, presiding, Dec. 16, 1985; (APPENDIX, Exhibit "I".)

The dates of the Judgments and Orders in the New Mexico Supreme Court are as follows:

1. The Order denying Petitioner's Alternative Writ of Prohibition and Mandamus, of Feb. 19, 1986; (APPENDIX, Exhibit "J".)

2. The Decision (affirming the two lower court decisions) of Nov. 18, 1986; (APPENDIX, Exhibit "K".)

3. The Order denying the Motion for Re-hearing, of Dec. 4, 1986; (APPENDIX, Exhibit "1"), (presented pursuant to Rule 21.1.(e)(ii)).

The Statutory Provisions for Jurisdiction, in this Court, are as follows:

1. Rule 17.1.(b), in that the New Mexico Supreme Court has decided the federal questions presented in a way conflicting with

other state supreme courts or of federal courts of appeal; and,

2. Rule 17.1.(c), in that the Santa Fe District Courts have decided important questions of federal law which have not been, but should be settled by the U. S. Supreme Court, and had decided important questions of federal law in a way conflicting with applicable decisions in the U. S. Supreme Court.

The following are the Constitutional provisions relied upon, presented pursuant to Rule 21.1.(f), and the pertinent New Mexico Statutes, the verbatim quotations of which are in the APPENDIX hereto, Exhibit "A":

1. U. S. Const. art. I, §10;
2. U. S. Const. amend. XIV, §1;
3. NMSA §42-5-1;
4. NMSA §42-5-5;
5. NMSA §36-2-28;
6. NMSA §56-5-1;
7. NMSA §56-5-3;
8. NMSA §42-5-2.

S T A T E M E N T O F T H E C A S E

There are two separate actions, later consolidated on appeal due to common questions of fact and law. The first action was for partition and sale, filed on Oct. 7, 1980, the subsequent one for foreclosure of the real estate contract, filed on June 14, 1985; both actions involved the same parties and property, with the exception that the prior action was to ascertain and declare the interests of the parties subject to a partition sale, while the new action by Third-Party Defendant following trial and decision in the prior action, was for a foreclosure of the real estate contract after the forfeitures of Defendants' interests as stipulated damages for their failures of contingent performances under the contract and under the law.

The court's subsequent entry of judgment, and further orders to enforce the judgment, ordering the sale of Petitioner's interests

without compensation, after having declared the interest, and the court's refusal to enforce inalienable rights exercised pursuant to the contract, which the exigencies of the situation required, had the effect of absolving the Defendants of their obligations of contract to Petitioner, and of depriving his property without just compensation or due process.

Subsequent to the court's entry of judgment, on Sept. 14, 1984, the court ordered the striking of all Petitioner's pleadings, pursuant to Defendants' allegations of illegal practice of law, pursuant to a New Mexico Statute prohibiting the unlicensed practice of law.

TIMELY OBJECTIONS RAISING THE FEDERAL ISSUES

The following excerpts from the Transcript of the Record Proper ("T.R.P.") and the Transcript of the Proceedings ("T.P."), in No. 16,117, show the raising of objections per-

• tinent to jurisdiction for this application in the U. S. Supreme Court:

1. (468-69, T.R.P. 16,117), paragraphs 8 and 9, Sept. 12, 1984, in which Petitioner asserted the voidness of the Judgment on its face, prior to its entry, and raising the due process issues.

2. (480-82, T.R.P. 16,117); Petitioner's Motion for Relief From Judgment, Sept. 20, 1984 (following entry of judgment by 6 days), pg. 2, paragraphs 2, 6, and 9; raising due process and equal protection issues.

3. (7 T.R. 16,117), May 28, 1985, Hearing to Show Cause (See APPENDIX, Exhibits "F" and "G" for the two pertinent orders); Petitioner made the following pertinent objections raising the issues of impairment of contracts, denial of due process, and deprivation of property without due process of law or just compensation:

(a) (7 T.P., lines 5-8); asserting the Court was attempting to extort a waiver of

rights and claims in denial of due process of law.

(b) (21 T.P., lines 18-19); Assertion of estoppels to deny defaults (unrebutted).

(c) (22 T.P., lines 20-22); Court's enforcement of contract with realtor violates due process of law, impairs contracts.

(d) (29 T.P., lines 9-11); Notice to court of Petitioner's intent to appeal the Federal issues.

(e) (29 T.P., lines 15-16); "Mr. Lyne: My basic argument is based on interference of the obligations of contract."

(f) (96 T.P., lines 18-23); Petitioner's refusal to sign agreement due to his objection that the court's order for him to do so violated his rights to due process of law and freedom from the impairment of his obligations of contract.

Petitioner, who had served due notice of his full tender and right to performance, followed by a notice of default of the

Defendants, prior to the entry of judgment, under the terms and conditions of the contract, continued to exercise his options under the contract, and on June 5, 1985, filed and served a Notice of Termination of Real Estate Contract, declaring the forfeitures, as and for the stipulated, liquidated damages stated in the contract, of the interests of Defendants, in remedy for their breaches and failures, as the equitably converted, wrongfully refused, equities of performances, pursuant to New Mexico law as the doctrine of *lex loci rei sitae* affected the contract.

On June 14, 1985, Petitioner filed a new action for foreclosure, based on his declaration in his notice of June 5, of the forfeitures, in exercise of his option in remedy for the breaches, as a summary proceeding to obtain the damages due him under the contract and under the law.

Defendants answered in the second action,

with a motion to dismiss pursuant to N.M.R. Civ. P. 12 (b), asserting a bar by res judicata of the Sept. 14, 1984 judgment in the prior action, as a final adjudication of all the matters of the complaint for foreclosure, and Plaintiff moved for summary judgment.

Meanwhile, in the prior action, Defendants filed a Motion to Enforce Judgment, and a hearing was held and an order was entered on Sept. 11, 1985. The Order to Strike Liens and Compel Sale, confirmed the sale and ordered the striking and further prohibiting of all pleadings of Petitioner.

Petitioner, at the hearing of Aug. 7, 1985, on Defendants' Motion to Enforce Judgment, raised the following Federal issues, shown in the Transcript, No. 16,117:

1. (10 T.P., lines 9-12); that the issue of the contract was not raised in the initial action;

2. (13 T.P., lines 1-6, 9-12); that he had an assigned interest of all Universal

Life Church's beneficial interests;

3. (16 T.P., lines 16-24); that the waiver of the liens rendered them moot pursuant to the termination and declaration of forfeiture.

4. (35 T.P., lines 5-11); that equitable doctrine required court to enforce the contract, following the court's order for payment of Petitioner's tender pursuant to escrow and real estate contracts, or the court will have impaired the contract.

Petitioner appealed to the the New Mexico Supreme Court, from the Order to Strike Liens and Compel Sale, and excepted to all of the orders of the court leading up to it, beginning with the Decision, on Oct.26, 1985.

The final hearing in the second action was held on Nov. 25, 1985, on Defendants' Motion to Dismiss and Plaintiff's Motion for Summary Judgment. The court dismissed the action in a judgment entered on Dec. 16, 1985, based on a bar by res judicata assert-

ed under Defendants' answer, in which they asserted the judgment of Sept. 14, 1984, in the prior action, as a final determination of the claims upon which the new action was based. The court ruled that that judgment was a prior dismissal with prejudice of Petitioner's claims, and was the determinative law of the prior case which controlled, pending appeal of that action.

Petitioner appealed from the second action on Dec. 16, 1985, and consolidated the two appeals in the New Mexico Supreme Court, based on common questions of fact and law.

After the two appeals had been docketed in the New Mexico Supreme Court, the prior court of Judge Encinias began to illegally reassert its jurisdiction in the case by resumption of proceedings to close the sale, pending the appeal of the action from the order of confirmation, at which time Petitioner sought an alternative writ of prohibition and mandamus in the New Mexico

Supreme Court, to prohibit abuse of process by the court and the Defendants, since the contempt proceedings which had been threatened and entertained constantly by the court, ostensibly to enforce its orders, were for the ulterior purposes, as stated throughout the petition for the writ, such as the following from page 4, paragraph (2), in pertinent part:

"...illegally attempting to compel plaintiff to relinquish his claims for relief, under deeds and contracts, and to illegally deprive him of his interests in property, his civil liberties and rights, his money and land, without due process of law, denying equal protection of law, in double and triple jeopardy, impairing and interfering in his contracts..."

Additionally, Petitioner asserted in his petition, Exhibit "A-1", page 11, "Points of Law", paragraph 1.(d), the following:

"The decree is void for lack of jurisdiction over the subject matter not decided in the action, in that the order for reimbursal is a tort award for which no claim or hearing was afforded to plaintiff."

iff, as a violation of his right to due process under the Fourteenth Amendment to the Federal Constitution.

On page 12 of the petition, under the same section, paragraph 2.(d), Petitioner stated:

"The summary conviction of plaintiff for contempt, for making claims for relief, as a member of a "non-lawyer class", under allegations of the illegal practice of law, and for filing pleadings, is a denial of equal protection of the laws, in that he was not treated equally as would have been a member of the "lawyer class" under like circumstances, in violation of the Fourteenth Amendment to the Federal Constitution."

Under Exhibit "A-3", page 15, "Points of Law", paragraph 1., Petitioner stated:

"The motion to enforce Judgment was an inducement of abusive process, for the ostensible purpose of utilizing plaintiff's claims for relief as grounds for conviction for contempt, in order to prohibit pleadings in the main action, as a denial of due process and a denial of equal protection.

Under Exhibit "A-4", page 17, "Points of Law", paragraph 4., Petitioner stated:

"The court abused its discretion by considering matters extrinsic to pleadings in the hearing without 10 days prior notice to a pro se plaintiff who was prohibited from pleading in the action, converting defendants' motion to enforce into a motion for summary judgment on the merits, as to claims no longer before the court under the moot liens, as a denial of due process."

The hearing on the application was held on Feb. 19, 1986, and the writ was denied on that day, the court ordering the parties to proceed with the appeal.

The Supreme Court of New Mexico having refused the alternative writ, Petitioner, in the appeal, argued that he was entitled to an unconditional dismissal in the prior action, and a judgment as a matter of law in the subsequent action, based on the facts in evidence showing Defendants' failures, defaults, and forfeitures, pursuant to Petitioner's contract rights, asserting the estoppels, failures, and lack of jurisdiction over the subject matter, or the persons or the

parties of the prior action, and the lack of any effect of the prior judgment as res judicata in Defendants' favors, being void on its face.

The New Mexico Supreme Court delivered its opinion affirming the two lower court decisions on Nov. 18, 1986, holding that the prior court's decision of Sept. 14, 1984, had not been timely appealed from, and that a clear abuse of discretion was not shown in the final order of Sept. 11, 1985, appealed from.

The affirmation of the New Mexico Supreme Court, of the decision in the second action appealed, was based on a ruling that the matters were in fact res judicata, pursuant to N.M.R.Civ.P. 12(b).

The Supreme Court denied Petitioner's Motion for a Rehearing, on Dec. 4, 1986, and Petitioner moved for a stay pending application for a writ of certiorari in this Court, on Jan. 5, 1987, granted by the New Mexico

Supreme Court on Jan. 8, 1987, for a period of 60 days.

The New Mexico Supreme Court having denied all Petitioner's requests for correction of the lower courts, and the district court of Judge Encinias having entered its order for the sale of Petitioner's property, in violation of his contracts, and no other adequate remedy at law being available to him, Petitioner hereby applies in the U.S. Supreme Court, for a Writ of Certiorari, or such other Writ as the Court may deem appropriate, to protect and enforce his inalienable rights under the U.S. Constitution.

ARGUMENT SUPPORTING APPLICATION
FOR WRIT OF CERTIORARI

Petitioner was improperly joined, as a Third-Party Defendant, and indispensable party to the partition action; as an involuntary party, with only a contingent interest in the property itself, under an in praesenti one-half interest in the contract of

purchase. The contract guaranteed the right to a conveyance of a half-interest in the property, as confirmed by the decision which declared the contract's validity pursuant to its rejection of the Defendants' defenses. The decision also declared that only a one-quarter interest had been conveyed to Petitioner, as a reasonably inferred conclusion, from the finding that Plaintiff Universal Life Church's interest was only one-quarter, due to the failure of David Coxon's deed to Petitioner (Plaintiff's grantor) to convey the contractually guaranteed one-half interest. This failure of the deed from David Coxon to effect the conveyance of the full half-interest required by the contract, entitled Petitioner to his contractually guaranteed contingent interest, subject to Defendants' obligations to perform, under the in praesenti real estate and escrow contracts.

Since Petitioner's interests in the property were contingent, and since he was im-

properly joined as an involuntary party to the partition action, the court lacked jurisdiction over the subject matter of his contingent interests, subject to the rights under the contract, which the court lacked legitimate authority to impair, sell, or to otherwise dispose of; the court's only jurisdiction, was to rule on the defenses to the validity of the deeds and contract raised by the Defendants, and under which they sought evasion, and which were rejected by the court.

Since, under the partition sale ordered by the court in its judgment, the court proceeded to dispose of Petitioner's contract interests and property, without compensation, and to absolve the Defendants in default, of all obligation, under the contract, the Petitioner was being deprived of property without just compensation or due process of law in violation of the Fourteenth Amendment to the U. S. Constitution, and his contract had been impaired in violation of Article I, Sec-

tion 10 of the U. S. Constitution.

Since Petitioner was denied standing to plead, as his only means of protecting and enforcing his contract and property rights as a member of a "non-attorney class", under a New Mexico statute forbidding the unlicensed practice of law, the court had also unconstitutionally deprived the rights to due process of law, the freedom from impairment of contracts, and the deprivation of property without due process of law, just compensation, or equal protection of the laws, the actions of the New Mexico Supreme Court were in error, for failure to correct the actions of the lower courts.

Since the New Mexico Supreme Court also affirmed the decision of the second district court action, by improperly ruling that the matters were res judicata under the void Judgment of Sept. 14, 1984, in the prior action in partition, the New Mexico Supreme Court is in error and should be reversed and

remanded to correct the judgments, and for entry of judgment for Plaintiff as prayed for in his complaint, with costs of appeal, and all allowable costs below.

ARGUMENT OF LAW ON PERTINENT
FACTS IN THE RECORD

Defendant David Coxon and Petitioner, William Lyne, had a valid contract, guaranteeing the conveyance of a one-half interest (APPENDIX, Exhibit "B", Finding of Fact No. 12, Conclusion of Law Nos. 3 and 4.).

Defendants failed to convey a one-half interest, having conveyed only a one-quarter interest (APPENDIX, Exhibit "B", Finding of Fact No. 12, Conclusion of Law Nos. 5, 7, 8, and 9.).

Neither Mary Coxon nor Plaintiff, Universal Life Church, had an interest in the contract of purchase.

The contract between David Coxon and William Lyne assigned a one-half interest in the contract of purchase, pursuant to NMSA § 56-

5-1 (1978) (APPENDIX, Exhibit "A", para. 6.).

The Defendants had notice of this failure under New Mexico law, because of their ratification of the contract, which if not later actual, would have been implied. Armijo v Nuchols, 57 NM 30, 153 P 2d 317.

Their refusal of complaine was estopped. Union P.R.Co. v McAlpine, 129 US 305, 32 L ed 673, 9 S Ct 286; 17 Am Jur 2d, CONTRACTS, § 9.

Nontheless, Petitioner served them one last notice, on July 26, 1984, persuant to NMSA §56-5-3 (1978) (APPENDIX, Exhibit "A", para. 7) to equitably convert their wrongfully refused equities of performance, and to obtain the damages to which he was entitled for the breach of the sellers, Defendants Luby, and according to the terms and conditions of the contract, in regard to Defendants Coxon.

After more than 30 days, during which time Petitioner served a notice of default, the court, on Sept. 14, 1984, entered its judg-

ment, ordering the sale, and ordering all Petitioner's pleadings, notices and claims stricken, on Nov. 14, 1984 (APPENDIX, Exhibits "C", "D", and "E").

On June 5, 1985, Petitioner filed and served a Notice of Termination of Real Estate Contract (530-39 T.R.P., 16,117) in exercise of his option for damages, pursuant to the clause in the original contract (paragraph 6, page 3) as assigned pursuant to paragraph 8¹, page 3, into the new contract (538 T.R.P. 16,117, first paragraph) and declared the forfeitures of Defendants' interests. 16 Am Jur 2d, CONSTITUTIONAL LAW, §592 (Rights of Contract), which states:

"Liberty of contract involves, as one of its essential attributes, the right to terminate contracts, subject only to civil liability for unwarranted termination."

Annotation: Adair v United States, 208 US 161, 52 L Ed 436, 28 S Ct 277 (ovrld on other grounds Phelps Dodge Corp. v NLRB, 313 US 177, 85 L Ed 1271, 61 S Ct 845, 133 ALR 1217).

The Notice declared the forfeiture under the contract (538 T.R.P. 16,117, top of page, and paragraph 2, 538-39 T.R.P.) based on the option available in the original contract (533 T.R.P., page 3, paragraph 6) as assigned in the Coxon/Lyne contract (538-39 T.R.P., paragraph 2), as ratified by the Defendants (254-56 T.R.P. 16,117) by acceptance of tender pursuant to the Consent Order, under the conditions giving rise to the equitable estoppel. All funds from which payment was made, were those of Petitioner, the Defendants having paid the Bank's legal expenses (235-36 T. R.P., 16,117 [Consent] Order) pursuant to the Bank's Cross-Claim (14-15 T.R.P. 16,117, paragraph 9).

2. IMPROPER JOINDER OF PETITIONER
AND LACK OF JURISDICTION OVER
THE SUBJECT MATTER

Petitioner was joined, on Jan. 21, 1981, by Defendant Mary Coxon, pursuant to N.M.R. Civ.P. 19 (51 T.R.P. 16,117) because he was "...needed for a complete and just adjudica-

tion of this matter."

Immediately afterwards, she made a motion to dismiss (50 T.R.P. 16,117) based on a failure to state a claim, denying all interest of Plaintiff, Universal Life Church altogether.

David Coxon's Amended Answer, Amended Counterclaim, and Third-Party Complaint, of Oct. 7, 1981 (143-45 T.R.P. 16,117) against Petitioner, made claim to the entire property and contract interest, and denied that Petitioner had any interest whatsoever, that the court under its jurisdiction in the partition action could decide.

Petitioner's Third-Party Answer (158-59 T.R.P. 16,117) denied D. Coxon's claims under his Third-Party Complaint, and made no affirmative claims, so as to empower the court to adjudicate any interest subject to a sale, subject to the jurisdiction of the court.

Defendants David Coxon (133-37 T.R.P.) and Mary Coxon (151-52 T.R.P. 16,117) both set up three issues to Plaintiff Universal Life

Church's Motion for Summary Judgment, all three of which were estopped and dispelled by their acceptance of tender, under conditions giving rise to the equitable estoppel (254-56 T.R.P. 16,117).

The statute under which the court first undertook to exercise its jurisdiction was NMSA §42-5-1 [Complaint; prayer.] (1978), et seq., (APPENDIX, Exhibit "A", paragraph 3), which designated the proceeding as one in equity under the rules of chancery.

NMSA §42-5-2 (APPENDIX, Exhibit "A", paragraph 8) requires that when parties are known to have a contingent interest, they are to be joined in the action as a party to the action; however, the Petitioner was impleaded only as an indispensable third-party defendant, pursuant to N.M.R.Civ.P. 19 (51 T.R.P. 16,117) to adjudicate the issues of the defenses asserted, which denied that Petitioner possessed any interest constituting any justiciable issue subject to the partition action, to which

Petitioner entered a denial, and no affirmative claims.

NMSA §42-5-5 [Decree; binding effect.], under which the court was required to make its interlocutory decree (APPENDIX, Exhibit "A", paragraph 4) the court was required to ascertain and declare the rights, titles, and interests of all the parties, to render a decree required by the rights of the parties which would be binding.

The court's declaration, in regard to Petitioner, included only that he had a one-half interest in a valid contract, and made no further allowance for compensation, tending to imply that the court lacked jurisdiction over any interest of Petitioner, other than to declare the validity of the contract in its finding against the Defendants' allegations seeking to avoid the contract, and as the only issues presented to the court for adjudication.

A partition can be maintained by an equit-

able owner only where his equity is complete and entitles him to demand a conveyance of the legal title. Hargis v Wedge, 159 P 2d 553, 554, 195 Okl 493.

However, Petitioner did not bring the action, was involuntarily joined to dispose of the defenses, and first had to convert his equitable interests following trial, prior to the accrual of his right to demand the conveyance to which he was entitled.

The possession by Petitioner of the expectancy or contingent interests guaranteed by the contract, was not such an interest as required his involuntary joinder under the partition action itself, and his joinder did not confer jurisdiction upon the court to dispose of his interests. C.J.S., PARTITION, 75 p., with annotation to the following case and quotation:

"Persons having contingent or future interests in lands sought to be partitioned are not necessary parties."

Frahm v Seaman, 159 NW 206
179 Iowa 144; 47 CS p 383
note 70.

The court thus lacked legitimate power to enter or to enforce a valid judgment for the sale of Petitioner's property, even though he had knowledge of the action and was present at trial; State ex rel Truitt v District Ct., 44 NM 16, 96 P 2d 710, 126 ALR 651; Employer's Reinsurance Corp. v Bryant, 299 US 374, 81 L Ed 289, 59 S Ct 273; Lee v Independent School Dist., 149 Iowa 345, 128 NW 533.

From the above authorities and facts, it is clear that the court lacked jurisdiction over the interests of Petitioner, and was proceeding all along without it, in denial of due process of law, as supported by Scott v McNeal, 154 US 34, 38 L Ed 896, 14 S Ct 1108, which stated:

"Unless jurisdiction exists, the judgment rendered is not by due process of law, and is ineffectual for any purpose; no rights can be derived, and all proceedings founded thereon are void and not entitled to any respect in any other tribunal."

An examination of the record shows that the judgment was void on its face, and in the legal sense, where it appears that, as an action in partition, the court lacked jurisdiction over the person or property of Petitioner to order a reimbursal to be paid from funds from the sale of his interest, and where the court neither granted compensation for the sale of the interests, nor possessed jurisdiction over interests which had not yet vested until after the decision, upon which the judgment was purportedly based; Hamblin v Superior Ct., 195 Cal 364, 233 P 337, 43 ALR 1509; State ex rel Commissioner's Land Office v Keller, (Okla) 264 P 2d 472; Howard v Boyce, 254 NC 255, 118 SE 2d 897; Harjo v Johnston, 187 Okla 561, 104 P 2d 985.

S U M M A R Y

1. IMPAIRMENT OF OBLIGATIONS OF CONTRACT
C.J., PARTITION, § 131 (1), states:

"In a suit for partition, a court of equity takes jurisdiction to do complete justice."

(See Drake v Morrow, 299 NW 545, 140 Neb 258.)

As held in Ross v Armstrong, 25 Tex Suppl 354, 78 Am D 574:

"It has been asserted every partition implies not only a warranty, but also a condition entire, the breach of which gives a right of entry into the whole, and avoidance of the partition."

If a contract was valid at the time made, under the Constitution and laws of the state as expounded by the state's highest authorities, no subsequent action by the judiciary can impair its obligation. Chicago v Sheldon, 76 US 50, 19 L Ed 544; Gelpcke v DuBuque, 68 US 175, 17 L Ed 520; 16 Am Jur 2d, Const. Law, § 648 (effect of existing laws.)

Any action of a court negating the means provided in a contract which the law affords for its enforcement, impairs the contract. Ogden v Saunders, 25 US 213, 16 L Ed 606.

On the full performance by Petitioner and

the discharge of his obligations by action of law, the obligations of Defendants were negated by the actions of the court in impairing the remedies as provided in the contract, an action which was prohibited by the rights of Petitioner. Val Verde Hotel Co. v Ross, 30 NM 270, 231 P 702, which stated:

"The deposit of a deed in escrow creates in the grantee such an equitable interest in the property that upon full performance of the conditions according to the escrow agreement, the title will vest at once in him."

The prohibition against impairment includes everything within the obligatory scope of the contract. Hendrickson v Apperson, 245 US 105, 62 L Ed 178, 38 S Ct 44; Salter v Nelson, 85 Utah 460, 39 P 2d 1061.

That the district court impaired the contract is clear.

2. DENIAL OF EQUAL PROTECTION OF LAWS

Defendant Mary Coxon's "Response to Plaintiff's and Third-Party Defendant's Pleadings", of Sept. 14, 1984 (473-74 T.R.P. 16,117)

moved to strike, for the "illegal practice of law"; the court's response was to order all pleadings stricken, because Petitioner was not an attorney, but was a member of the "non-attorney" class (See APPENDIX, Exhibit "D"), finally striking the pleadings on Nov. 14, 1984 (See APPENDIX, Exhibit "E").

The guaranty of equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances. Truax v Corrigan, 257 US 312, 66 L Ed 254, 42 S Ct 124, 27 ALR 375 (See 16A Am Jur 2d, CONSTITUTIONAL LAW, §735).

The statute, (NMSA §36-2-28. [Practice without valid license; penalty.]) (See APPENDIX, Exhibit "A", paragraph 5.) under which the court proceeded, was intended to protect the general public and the legal profession itself, from unlicensed hucksters, was completely inappropriate to the circumstances, and

was clearly intended to prohibit Petitioner's right to plead in protection of his interests, in denial of equal protection of the laws. Had Petitioner been a licensed practitioner, certainly this action would not have been taken, and the equal protection clause of the U. S. Const. amend. XIV, §1, was abridged.

Whether a smaller ('lawyer') class deprives a privilege or immunity from a larger ('non-lawyer') class, or vice-versa, the effect of depriving a personal or property right is the same deprivation prohibited by the U.S. Constitution. (See 16A Am Jur 2d, CONSTITUTIONAL LAW, §738.)

3. DENIAL OF DUE PROCESS OF LAW

Without jurisdiction of the subject matter, the prior judgment was void. Bates v Bates, 1 Ariz app 165, 400 P 2d 593; Earle v McVeigh, 91 US 503, 23 L Ed 398; Fauntleroy v Lum, 210 US 230, 52 L Ed 1039, 28 S Ct 641; Re Christiansen, 17 Utah 412, 53 P 100 3, later app

23 Utah 209, 63 P 896. (See 46 Am Jur, JUDGMENTS, §24.)

A void judgment has no effect as res judicata because the doctrine is predicated upon a valid judgment. Hoag v New Jersey, 356 US 464, 2 L Ed 2d 913, 78 S Ct 829, reh den 357 US 933, 2 L Ed 2d 1375, 78 S Ct 1366; Shepherd v Pepper, 133 US 626, 33 L Ed 706, 10 S Ct 438; Re West Jordan Inc., 7 Utah 2d 391, 326 P 2d 105.

Events after trial created a new legal situation which altered the legal rights of the litigants, and precluded the operation of the judgment as an estoppel in Defendants' favors in the new action. State Farm Mut. Auto Ins. Co. v Duel, 324 US 154, 89 L Ed 872, 65 S Ct 573; Thompson v Washington Nat. Bank, 68 Wash 42, 122 P 606; Annotation: 149 ALR 1195, 1198; Adams v Simmons, (Tex Civ App) 376 SW 2d 589, error ref n r e.

The due process rights of Petitioner were clearly denied by the district courts in both

lower court actions, and by the New Mexico Supreme Court, on appeal.

4. DEPRIVATION OF PROPERTY WITHOUT
DUE PROCESS OF LAW OR JUST COM-
PENSATION

"Valid contracts have the status
of property for the purpose of
the guaranty of due process of law."

As stated in: N.H. Lyons & Co. v Corsi, 3 NY
2d 928, 167 NYS 2d 945, 145 NE 2d 885, app
dismd 355 US 284, 2 L Ed 271, 78 S Ct 342.

The following, from 113 ALR 202, Note 7,
provides a pertinent parameter, and states:

"The word "state" in the provision
of the Fourteenth Amendment that
no state shall deprive any person
of life liberty or property without
due process of law, is broad enough
to include the decision of a court.
[See R.C.L. title "Constitutional
Law, § 440]."

Note 8, 113 ALR 202 (supra) states:

"No order may be made by a court in
the enforcement of a judgment which
would, in violation of due process,
take from a litigant substantive
property rights."

The court lacked jurisdiction to deprive
Petitioner of his subsequently acquired prop-

erty interests. Garren v Rollis, 85 Idaho 86, 375 P 2d 994; Hess v Pawloski, 274 US 357, 71 L Ed 1096, 47 S Ct 632; Marquez v Rapid Harvest Co., 99 Ariz 363, 409 P 2d 285; Great West Min. Co. v Woodmas of Alston Min. Co., 12 Colo 46, 20 P 2 771; Abelleira v District Ct. of Appeals, 17 Cal 2d 280, 109 P 2d 942, 132 ALR 715.

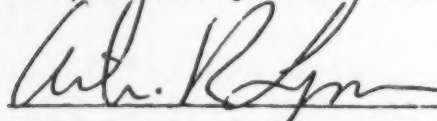
The court thereby took away the contract which was a property interest; the court's actions, judgment, and enforcement violated Petitioner's due process rights; since there was no compensation whatsoever, there was no 'just' compensation, and the taking was also unjust.

The failure of the courts to act, where an order might have been had as a matter of course, deprived Petitioner of his contract by their refusals to act or to grant an order to validate the proceeding fully authorized under the contract. Gamble v Scott, 56 Md 176, 181; Brown v Hazlehurst, 54 Md. 26.

Under authority at 30 C.J.S. §106 (b) (equitable conversion), where some act necessary to the rights of the parties has been omitted, equity regards the act as done in fulfillment of the intention of the parties.

The acts by the lower courts, which exceeded the defined powers under the Constitution, the statutes, and legal precedents, may be annulled on certiorari. Abelleira v District Ct. of Appeals, (supra).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'W. R. Lyne', is written over a horizontal line.

WILLIAM R. LYNE, Petitioner,
pro se

General Delivery
Lamy, N. Mex. 87540
Tel: (505) 983-3022

A P P E N D I X

The following are constitutional and statutory provisions, quoted verbatim, in pertinent sections, pursuant to Rule 21.1.(f) and (k):

1. U. S. Const. art. I, §10:

"No State shall enter into any Treaty, Alliance, or Confederation; grant letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto law, or law impairing the Obligation of Contracts, or grant any Title of Nobility."

2. U. S. Const. amend. XIV, §1:

"All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. NMSA §42-5-1.[Complaint; prayer.]

"When any lands, tenements or hereditaments shall be owned in joint tenancy, tenancy in common or coparcenary whether the right or title be derived by donation, grant, purchase, devise or descent, it shall be lawful for any one or more persons interested, whether they be in possession or not, to present to the district court their complaint in chancery, praying for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners."

4. NMSA §42-5-5.[Decree; binding effect.]

"The court shall ascertain and declare the rights, titles and interests of all the parties to such proceedings and render such decree as may be required by the rights of said parties, whether they be adults or not."

5. NMSA §36-2-28.[Practice without valid license; penalty.]

"If any person shall, without having become duly licensed to practice, or whose licenses to practice shall have expired either by disbarment, failure to pay his license fee or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of an offense un-

der this act [36-2-26, 36-2-28 NMSA 1978], and on conviction thereof be fined not to exceed five hundred dollars [(\$500)], or be imprisoned, for a period not to exceed six months, or both."

6. NMSA §56-5-1.[Assignability; rights of assignee.]

"Except as provided in the Uniform Commercial Code [55-1-101 to 55-9-507 NMSA 1978], notes, bonds, due bills and all instruments in writing, by which the maker promises to pay in property or labor, or acknowledges any money or labor or property to be due, are assignable by endorsement or by other writing, and the assignee has a right of action in his own name, subject to any settoff, legal or equitable, which the maker or debtor had against any assignor before notice of his assignment."

7. NMSA §56-5-3. Contracts not specifying time of performance; demand necessary.

"Except as provided in the Uniform Commercial Code [55-1-101 to 55-9-507 NMSA 1978], no contract for labor, or for the payment or delivery of property in which the time of performance is not fixed, can be converted into a money demand until demand of performance has been made and the maker refuses or a reasonable time is allowed for performance."

Exhibit "B", pg. 1. -4a-

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. SF 80-1887 (c)

UNIVERSAL LIFE CHURCH, Plaintiff,

-vs-

DAVID COXON, et al., Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter come before the Court for hearing upon the merits of the case. The Universal Life Church and William appearing by counsel, Eric Treisman, David Coxon appearing by Ann Yalman and Mary Coxon appearing by Jacob Carian. Thereafter, evidence and arguments were taken and carefully considered by the Court and the Court now issues its Findings of Fact and Conclusions of Law based upon the evidence and argument.

FINDINGS OF FACT

1. The parties are as follows: The Universal Life Church is a New Mexico Corporation doing business in New Mexico; William Lyne is a resident of Santa Fe County as is David Cox-

15. Lyne, who is not a lawyer, prepared a real estate agreement and a quitclaim deed which were intended to convey a full one-half interest in the property from Coxon to Lyne.

16. Lyne did not threaten, coerce or otherwise intimidate Coxon into executing the documents.

17. Coxon is an intelligent adult man who is familiar with the principles of land transactions.

18. Coxon executed the papers which Lyne prepared on April 19, 1979 and Lyne recorded them on April 20, 1979.

19. Thereafter, Lyne transferred his interest in the property to the Universal Life Church, Inc. of Lamy, New Mexico.

20. Division of the property is prohibited by the original Coxon-Luby real estate contract and is presently impractical.

21. Prospects of the sale of the property are diminished because the property is marred by old cars, trash and other unsightly person-

al property of David Coxon.

22. In persuing this action for Partition, the Universal Life Church and William Lyne incurred certain costs and attorneys fees.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this lawsuit and over the parties.

2. In 1978, David Coxon was the equitable owner of certain land located in Santa Fe County, New Mexico.

3. In that same year, David Coxon and William Lyne entered into a valid agreement whereby Coxon was to convey a one-half interest in the land to Lyne and, in return, Lyne was to bring the payments up to date on the Luby real estate agreement and to continue to make one-half of the monthly payments under that agreement.

4. The real estate agreement and quitclaim deed by which Coxon effected the 1978 agreement and which were recorded on April 20, 1979 is

valid and binding between David Coxon and William Lyne.

5. The quitclaim deed from David Coxon to himself and Mary Coxon, recorded March 16, 1979, is valid and binding.

6. Neither the Plaintiff nor Defendants Coxon showed duress or fraud in these conveyances.

7. In March 1979, David Coxon validly conveyed a one-half interest in the property to himself and to his mother, Mary Coxon.

8. In April 1979, David Coxon validly conveyed a one-half in his remaining one-half interest in the property to William Lyne who subsequently quitclaimed his interest to the Universal Life Church.

9. The interests of the parties in the property in question should be declared as follows:

Universal Life Church	1/4
David Coxon	1/4
Mary Coxon	1/2

10. It is impractical, due to the condition of the land and the prohibition against division contained in the Luby contract, to partition the property.

11. The property should be sold at the earliest practicable time, not to exceed 120 days from the date of the entry of judgment, for its fair market value and the proceeds of sale, less the cost of sale, should be (1) used to retire the liens and encumbrances and (2) distributed to Lyne, David and Mary Coxon according to their respective interests.

12. David Coxon should be required to remove all cars, trash and personal property from the land in question within 60 days from the date of the entry of judgment.

13. If additional costs are incurred in the clearing of the land to make it salable, those costs should be charged against the interest of David Coxon and deducted from the proceeds, if any, due him.

14. William Lyne should be required to

reimburse the escrow account for the attorneys fees secured by the Bank of Santa Fe out of his share of the proceeds from the sale of the land.

15. The Universal Life Church should be awarded reasonable attorneys fees, pursuant to section 42-5-8 (c) NMSA 1978, not to exceed \$3200.00.

All other Findings of Fact and Conclusions of Law which were proposed by counsel and which are inconsistent with the foregoing findings and conclusions are hereby rejected.

- S -

Art Encinias
District Judge

Exhibit "C", pg. 1. -12a-

Jacob Carian
Suite 1627 -
Western Bank Bldg.
505 Marquette N.W. Albuquerque, N.M. 87102

From: Art Encinias
District Judge
Division V
Sept. 14, 1984

Re: UNIVERSAL LIFE CHURCH V DAVID COXON, ET AL,
SF 80-1887 (C)

Dear Sir:

The court is in receipt of your motion to strike the Lyne pleadings filed without permission of the court.

The court sees no need for hearing on your motion. It is plain to me that Mr. Lyne has no authority to file his pleadings in light of the court's decision in this matter. It is even more evident that the pleadings are the work of a non-lawyer.

Your motion is granted insofar as the pleadings are stricken but denied as to your request for fees. Please prepare an order to that effect, circulate it among the parties and submit it to the court for signature and entry within 14 days.

Additionally, your form of judgment has been signed and a conformed copy accompanies this letter.

Very truly yours,

Art Encinias
District Judge

cc: All Counsel and Mr. Lyne

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

NO. SF-1887(c)

UNIVERSAL LIFE CHURCH

Plaintiff,

-vs-

DAVID COXON, et al.,

Defendants.

JUDGMENT

This matter coming on for hearing and the parties appearing in person and by counsel and the court having heard the testimony of the parties and the witnesses and viewed the evidence and having filed it's findings of fact and conclusions of law and being fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That the interest of the parties to the real estate in question is as follows:

Universal Life Church	1/4
-----------------------	-----

David Coxon	1/4
-------------	-----

Mary Coxon	1/2
------------	-----

2. That the property be sold within 120 days of the entry of this judgment and the proceeds used to retire liens and encumbrances first

and that the balance be distributed to the parties according to their above interests..

3. William Lyne is to reimburse the escrow account for attorney fees paid to the Bank of Santa Fe from his share of the proceeds from the sale of the land.

4. Universal Life Church is awarded reasonable attorney fees of \$3200.00.

(sig: Art Encinias)

Art Encinias,
District Court Judge

(sig: Ann Yalman)

Attorney for Defendant
David Coxon

(sig: Jacob Carian)

Attorney for Defendant
Mary Coxon

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

NO. SF 80-1887(C)

UNIVERSAL LIFE CHURCH, Plaintiff,

-VS-

DAVID COXON, et al., Defendants.

ORDER

Upon motion of Carian and Casey, attorneys for defendant Mary Coxon to strike all pleadings filed in the above matter by William Lynes, either on his behalf or on behalf of the plaintiff Universal Life Church and the court being fully advised in the premises, FINDS the motion well taken.

IT IS THEREFORE ORDERED that all pleadings filed by William Lynes for himself and on behalf of the Universal Life Church be and hereby are stricken.

(sig: Art Encinias)
DISTRICT COURT JUDGE

Approved as to form:

(sig: Jacob Carian)
Attorney for defendant Mary Coxon

(sig: Ann Yalman)
Attorney for defendant David Coxon

Exhibit "F".

-17a-

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

No. SF 80-1887(c)

UNIVERSAL LIFE CHURCH, Plaintiff,

-vs-

DAVID COXON, et al., Defendants.

ORDER TO SHOW CAUSE

THIS MATTER came before the court upon information that William Lyne and the Universal Life Church have refused to comply with the lawful Judgment and order of this court, issued September 14, 1984, and they are, therefore, in contempt of court and subject to sanctions thereon.

IT IS THEREFORE ORDERED that William Lyne appear before this court at 1:00 p.m. (trailing docket) on the 28th day of May, 1985, then and there to show cause why he should not be sanctioned, and why a special master should not be appointed to execute documents in accordance with the judgment of the court.

(sig: Art Encinias)
District Court Judge

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. SF 80-1887(c)

UNIVERSAL LIFE CHURCH, Plaintiff,

-vs-

DAVID COXON, et al., Defendants.

ORDER APPOINTING A SPECIAL MASTER

THIS MATTER came before the court upon information that William Lyne was refusing to comply with his obligation to cooperate in the sale of the subject property pursuant to the October 1984 Judgment of the court. At the hearing, William Lyne appeared pro se, as did Mary Coxon; additionally, realtor Diana Isaacs appeared. After granting ample opportunity to all parties to speak, the court finds:

1. William Lyne has refused and continues to refuse to comply with the Judgment of the court requiring the prompt sale of the subject property;

2. The realtor is in receipt of a fair and reasonable offer for the purchase of the subject property;

3. A Special Master should be appointed to act for the court in executing all appropriate documents and otherwise acting in the furtherance of said judgment;

IT IS THEREFORE ORDERED that Art Michael, Attorney at Law, be and hereby is appointed as Special Master in this case, to act as and for the court in the execution of the court's judgment.

IT IS FURTHER ORDERED that the Special Master shall be compensated for his services at a reasonable rate from William Lyne's share of the proceeds of sale before distribution to Lyne.

IT IS FURTHER ORDERED that the Special Master in acting for the court, ensure that Mr. Lyne is not to bear personal obligation to clear the subject property of all debris or other material; that Mr. Lyne bear no obligation under a wraparound mortgage arrangement; and the sale and conveyance of the property accomplished no later than June 26, 1985.

(sig; Art Encinias)
Art Encinias,
District Judge

cc: William Lyne
David and Mary Coxon
Diana Isaacs
Art Michael

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

No. SF 80-1887(c)

UNIVERSAL LIFE CHURCH, Plaintiff,

-vs-

DAVID COXON, et al., Defendants.

ORDER TO STRIKE LIENS AND COMPEL SALE

THIS MATTER having come before the court on Defendants Coxon's motion to enforce the Judgment, Plaintiff Lyne appearing pro se, Defendants Coxon appearing by and through their attorney, Jacob Carian, P.A., and the court being fully advised of the circumstances, FINDS THAT:

1. The Special Master appointed herein has authority to execute the deeds and agreements necessary to effect the sale of the subject property.

2. The liens filed by the Plaintiff under this cause number are null and void.

3. No order of this court is to effect any rights, claims or apply to any other matters

pending in any other courts, particularly Judge Kaufman, which matters are specically reserved to such court.

IT IS THEREFORE ORDERED THAT:

1. The Clerk of the County of Santa Fe may and hereby is ordered to strike from the County records any and all liens filed by the Plaintiff or Universal Life Church under this cause number, and particularly those filed in Mis. Bk. 519, Pg. 730; Mis. Bk. 500, Pg. 765; Mis. Bk. 518, Pg. 416; and Mis. Bk. 521, Pg. 655.

2. The Plaintiff is ordered to cease and desist filing any new liens or pleadings under this cause number under this cause number (sic.).

3. The Special Master shall hold a sale of the subject property within thirty days, after this order is entered, provided however, that he shall not accept a purchase price of of less than \$53,000,00; and further provided that he may arrange for the sale in any commercially reasonable manner.

4. The Special Master shall direct that the proceeds of the sale be held in escrow until a plan distribution has been approved by this court.

5. That prior orders of the court since entry of judgment are to continue in full force and effect.

(sig: Art Encinias)
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

WILLIAM LYNE

(sig: Jacob Carian)
JACOB CARIAN, P.A:
Attorney for Defendant

FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

No. SF 85-926(c)

WILLIAM R. LYNE,

Plaintiff,

-vs-

DAVID V. COXON, et al., Defendants.

ORDER

THIS MATTER having come before the Court, at a hearing on November 25, 1985, Plaintiff William Lyne appearing pro se, and Defendants Coxon appearing through their attorney DAVID FRIZZELL, the Court having heard oral argument and having read the pleadings,

THE COURT FINDS THAT the Plaintiff's Motion for summary Judgment should be denied and the Defendants' Motion to dismiss should be granted.

IT IS THEREFORE ORDERED THAT the Complaint in this cause be and hereby is dismissed with prejudice.

IT IS FURTHER ORDERED THAT the Clerk of the County of Santa Fe may and hereby is or-

dered to strike from the county records any
and all liens filed by the Plaintiff William
Lyne or Universal Life Church under this cause
number.

(sig: Bruce Kaufman)
District Court Judge

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
Wednesday, February 19, 1986

NO. 16,231

UNIVERSAL LIFE CHURCH and
WILLIAM R. LYNE,

Petitioners,

-vs-

HON. ART ENCINIAS,

Respondent.

This matter coming on for consideration by the Court upon petition for writ of prohibition and mandamus, and the Court having considered said petition and having heard oral argument and now being sufficiently advised;

NOW, THEREFORE, IT IS ORDERED that petition for writ of prohibition and mandamus is hereby denied.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

UNIVERSAL LIFE CHURCH,

Plaintiff-Appellant,
No. 16,117

-vs-

DAVID V. COXON, et al.,

Defendants-Appellees.

WILLIAM R. LYNE,

Plaintiff-Appellant,
No. 16,212

-vs-

DAVID V. COXON, et al.,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF SANTA FE
COUNTY

Bruce E. Kaufman, District Judge

William R. Lyne
Lamy, New Mexico

Pro Se

Jacob Carian
David Frizzel
Albuquerque, New Mexico

For Appellees Coxon

Eric Sommer
Santa Fe, New Mexico

For Appellees Isaacs

Michael S. & Esther Luby
Santa Fe, New Mexico

Pro Se

Donald Montoya
Santa Fe, New Mexico

For Appellees Lacy

OPINION

STOWERS, Justice.

These two actions were consolidated for
purposes of appeal as they involve the same

subject matter and parties. Plaintiff in each case, Universal Life Church and William R. Lyne, appeals from the district courts' orders directing the sale of the subject property and dismissing plaintiff's action. We affirm each of the orders.

The first consolidated case, SF 80-1887 (c), was filed October 3, 1980, as a partition action. After a hearing on the merits, the district court concluded that partition was impractical, determined the interests of the parties, and ordered the sale of the property. Judgment was entered on September 14, 1984. Subsequent orders were entered to give effect to the judgment and dispose of the pleadings and liens filed by plaintiff. The last order of the district court in this case was entered September 11, 1985, directing the special master to sell the property and hold the proceeds in escrow pending a court approved distribution. Plaintiff filed an appeal from this action on September 26, 1985.

Plaintiff filed the second consolidated

case, SF 85-926(c), on June 14, 1985, as a foreclosure action. This second complaint involved the same parties and the same property as the first case. After a hearing on plaintiff's motion for summary judgment and defendants' motion to dismiss, the district court held that the judgment of September 14, 1984, in the first case disposed of the issues. Consequently, the district court dismissed the second action in an order entered December 16, 1985. Plaintiff filed an appeal from this order on December 16, 1985.

Plaintiff raises numerous issues in his initial appeal of September 26, 1985, case number SF 80-1887(c). However, many of the contentions listed in his notice of appeal are not appealable as they are not final judgments or decisions, interlocutory orders or decisions which practically dispose of the merits, final orders after entry of judgment which affect substantial rights, or judgments in any proceeding for civil contempt. See

NMSA 1978, Civ.App.R. 3(a)(Rep.Pamp.1984). Even if these contentions were appealable issues, plaintiff failed to appeal items 1-13 and 15 within thirty day period required by Appellate Rule 3(a). Plaintiff's appeal was timely only as to one order; item 14. For the above reasons, we dismiss plaintiff's notice of appeal items 1-13 and 15.

Plaintiff's notice of appeal item 14 is an order filed September 11, 1985, striking plaintiff's liens and ordering the special master to sell the property in question. We find that substantial evidence supports the district court's ruling on this issue and that plaintiff did not show that the district court clearly abused its discretion in its order. See Newsome v Farer, 103 N.M. 415, 708 P. 2d 327 (1985). We therefore affirm the district court in this first consolidated case.

Plaintiff's second appeal of December 16, 1985, case number SF 85-926(c), arises from the district court's order denying plaintiff's

motion for summary judgment and granting defendants' motion to dismiss. The basis for defendants' motion to dismiss was that the issues complained of in the second cause of action were barred by the principles of res judicata.

Similar to the case presently before us, the defendant-appellant in Three Rivers Land Co. v Maddoux, 98 N.M. 690, 652 P. 2d 240 (1982) also raised the affirmative defense of res judicata in a motion to dismiss. In that opinion, this Court indicated that a motion to dismiss was not the appropriate pleading with which to raise the res judicata defense and recognized that the appeal, therefore, was improperly before them. Id. at 694, 652 P.2d at 244. Nevertheless, in the "interest of the speedy administration of justice", the Court went on to decide the issue on appeal; reversing the trial court and finding that the res judicata defense did in fact bar the subsequent action. Id. at 694, 696, 652 P. 2d at 244, 246.

A review of this motion practice in the federal courts discloses the prevalent view that a complaint clearly showing that relief is barred by an affirmative defense may be dismissed under Rule 12(b) motion. Fed.R.Civ.P. 8, 12: Larter & Sons, Inc. v. Dinkler Hotels Co., 199 F. 2d 854 (5th Cir. 1952). Generally, the facts supporting the defense must appear plainly upon the face of the complaint and must reveal what specific evidentiary matter is the basis for the dismissal. Miller v. Shell Oil Co., 345 F.2d 891 (10th Cir. 1965). This now common expansion of the motion practice beyond the express scope of Rule 12(b) promotes speedier pretrial procedure and eliminates needless trials while preserving meritorious claims for full adjudication.

This examination of federal policy and procedure convinces us that the affirmative defense of res judicata may properly be raised in a motion to dismiss. Consequently, we now overrule Three Rivers Land Company v. Maddoux

insofar as it discourages this motion practice
and affirm the district court's order in this
second consolidated case dismissing plaintiff's
complaint with prejudice.

IT IS SO ORDERED.

(sig: Harry E. Stowers)
HARRY E. STOWERS, JR.,
Justice

WE CONCUR:

(sig: William Riordan)
WILLIAM RIORDAN, Chief Justice

(sig: William R. Federici)
WILLIAM R. FEDERICI, Justice

Exhibit "L".

-34a-

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
Thursday, December 4, 1986

NO. 16,117 & NO. 16,212

UNIVERSAL LIFE CHURCH
and WILLIAM R. LYNE,

Plaintiff-Appellants,

-vs-

DAVID V. COXON, et al., Defendants-Appellees.

This matter coming on for consideration
by the court upon Motion of Appellants for
a rehearing, and the Court having considered
said motion and being sufficiently advised;

NOW, THEREFORE, IT IS ORDERED that Mo-
tion of Appellants for rehearing is hereby
denied.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
NO. 16,117, NO. 16,212

MANDATE

THE STATE OF NEW MEXICO TO THE DISTRICT
COURT sitting within and for the County of
Santa Fe, GREETING:

WHEREAS, said cause lately pending before
you, numbered SF-1887(c) and SF 85-926(c) on
your Civil Docket, wherein Universal Church
and William R. Lyne were Plaintiffs and David
V. Coxon, et al were Defendants, by your con-
sideration in that behalf judgment was entered
against said Plaintiff; and

WHEREAS, said cause and judgment were
afterwards brought into our Supreme Court
for review by Plaintiffs by appeal, where-
upon such proceedings were had that on No-
vember 18, 1986, an opinion was handed down
by said Supreme Court and Judgment was en-
tered affirming your judgment aforesaid, and
remanding said cause to you.

NOW, THEREFORE, this cause is hereby

remanded to you for such further proceedings therein as may be proper, if any, consistent and in conformity with said Opinion and said judgment.

WITNESS, the Hon. Harry E. Stowers, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 4th day of December, 1986.

(sig: Rose Marie Alderete)
Clerk of the Supreme Court
of the State of New Mexico